IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

OP.No. 38786 of 2001(P)

PETITIONER:

JOHNSON CHOKKATTU
S/O.JOSEPH CHOKKATTU
CHOKKATTU HOUSE
PAISAKARI P.O.
PAYYAVOOR.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENTS:
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1. THE DISTRICT COLLECTOR
   KANNUR.

2. SPL. DEPUTY TAHSILDAR (REVENUE RECOVERY)
   TALUK OFFICE
   TALIPARAMBA
   KANNUR DIST.

3. THE OFFICIAL LIQUIDATOR
   HIGH COURT OF KERALA
   CARMEL BUILDINGS
   BANERJI ROAD, ERNAKULAM.

4. THE KERALA STATE INDUSTRIAL DEVELOPMENT
   CORPORATION LTD., THIRUVANANTHAPURAM
   REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV. SRI.K.MONI
SRI.M.PATHROSE MATTHAI (SR.)
SRI.SAJI VARGHESE
BY GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP38786/2001

ORDER ON C.M.P.NO.63586/2001 IN O.P.NO.38786/2001

DISMISSED

26.11.2007 SD/- P.R.RAMAN, JUDGE

PETITIONER'S EXHIBITS:

1. EXT.P2: A PHOTOCOPY OF THE ORDER IN C.P.5/98 DATED 20.3.2001.

2. EXT.P3: A PHOTOCOPY OF THE REVENUE RECOVERY NOTICE.

RESPONDENTS' EXHIBITS:

1. EXT.R4(a) : NOTICE DATED 9.6.2000 ISSUED BY THE 4TH RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

P.R.RAMAN, J

O.P.No.38786 of 2001

Dated this the 26th day of November, 2007

JUDGMENT

The petitioner was one of the Directors of a private limited company by name Trend Setters Instyle India Ltd., Kakkanadu. The said company availed loan from the K.S.I.D.C. to which the petitioner stood as one of its guarantors for the repayment of the same. Subsequently the company went in liquidation. So the creditor K.S.I.D.C. initiated proceedings for recovery of the amount due to them by way of revenue recovery action and demand notice was served on the petitioner. Challenging the same petitioner approached this court. The learned counsel appearing on behalf of the petitioner raised the following points (1) that the debt is barred by law of limitation (2) there is no adjudication by the civil court on the amount due and payable to the creditor K.S.I.D.C. (3) that the creditor did not seek to recover the amounts from the liquidator by preferring any claim under the provisions of the Companies Act (4) In the absence of any agreement as contemplated under Section 68 of the Revenue

Recovery Act the amount cannot be recovered under the Revenue Recovery Act.

2. As per Ext. R4(a) produced along with the counter affidavit filed by the 4th respondent it would show that there were three separate loans and the amounts were advanced in 1991. It is seen from Ext. R4(a) that the above loans have been personally guaranteed by three persons including the petitioner. As per the repayment condition the loan was to be repaid in fourteen and half yearly instalments commencing after a moratorium of 24 months from the date of disbursement of the first instalment of the loan. Therefore repayment can be made on or before 2000. Having not paid the amount, requisition was already made to the District Collector in 14.8.2001 as averred in paragraph 2. Hence, the claim is not barred by limitation.

3. As regards the contention that in the absence of any agreement between the parties as contemplated under Section 68 no amount can be recovered under the Revenue Recovery Act, it is to be observed that the Act at the first instance enables recovery of public revenue due on land. But there may be other amounts due to the Government which are by force of Section 68

are also recoverable as though arrears of land revenue provided there is an agreement between the parties. But as per Section 71 of the Act Government is empowered to issue notification extending the provision of the Act to amounts due or payable to certain public institutions and corporations. As stated in the counter affidavit the Government of Kerala issued notification G.O.(MS)No.1065/83/RD dated 22.11.1983 extending the Revenue Recovery Act for recovery of the loan amount due to the K.S.I.D.C. Thus by virtue of Section 71 and the notifications issued, the amount can be recovered under the Revenue Recovery Act.

4. The next contention is that the amount cannot be recovered unless there is an adjudication by a civil court. Under Section 72 of the Revenue Recovery Act, if there is any such dispute, it is open to the debtor to deposit the amount and then seek an adjudication by a civil court. So noting prevents the petitioner to get adjudication by the civil court in the manner as prescribed under Section 72 of the Act. Merely because the quantum is disputed there is no bar to proceed under the Revenue Recovery Act. On the other hand, it is only when the

very liability is disputed that an adjudication by a civil court is required to be made as precondition to initiate Revenue Recovery action. The counsel appearing for the petitioner has relied on the decision of the Division Bench of this court reported in **Shriram Engineering Construction Company Ltd. v. K.S.I.D.C. and another (2007(1) Kerala ILR 745)**. I have carefully perused the above decision which has no application to the fact of this case. It was held therein that if the very termination of the contract is disputed, naturally the liability is disputed. Recovery cannot be made under the Revenue Recovery Act. Here there is no dispute to the liability as such. Further, as rightly pointed out by the learned counsel appearing for the respondent petitioner has not been able to place any material to show that he had raised any such dispute at any point of time against Ext.R4(a) nor has he raised any dispute before the District Collector. In such circumstances, the dispute raised for the first time under Article 226 of the Constitution of India cannot be taken as a bonafide dispute. At any rate it is not a matter of this court to adjudicate the same rather it is open to the petitioner, if so advised, to seek remedies

as provided under Section 72 of Revenue Recovery Act and seek recourse to adjudication proceedings by a civil court after depositing the amounts.

5. Since the petitioner is a guarantor his liability is coextensive with the principal debtor. In such circumstances, the mere fact that the creditor has not proceeded to recover the amount from the principal debtor is not a ground to resist such recovery by him when he is admittedly a guarantor whose liability is co-existent with the principal debtor. Further as stated by the learned counsel for the 4th respondent time for preferring claim against the principal debtor is not yet reached. Since the company is in liquidation claim petition can be preferred when notified. That stage is not reached.

In the result, I find no merit in the writ petition. Accordingly the same is dismissed.

P.R.RAMAN,
JUDGE

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